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**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	
)	Case No. 08-35653-KRH
CIRCUIT CITY STORES, INC., et al. ¹ ,)	Jointly Administered
)	Chapter 11
Debtors.)	Hon. Kevin R. Huennekens

**PNY TECHNOLOGIES, INC.'S MOTION FOR LEAVE TO
INCLUDE ARGUMENTS OF COUNSEL IN RECORD ON APPEAL**

PNY Technologies, Inc. ("PNY") files this Motion pursuant to Local Rule 8006-1 to include arguments of counsel in the record on appeal, stating as follows:

¹ The Debtors are as follows: Circuit City Stores, Inc., Circuit City Stores West Coast, Inc., InterTAN, Inc., Ventoux International, Inc., Circuit City Purchasing Company, LLC, CC Aviation, LLC, CC Distribution Company of Virginia, Inc., Circuit City Properties, LLC, Kinzer Technology, LLC, Abbott Advertising Agency, Inc., Patapsco Designs, Inc., Sky Venture Corp., PRAHS, INC., XSStuff, LLC, Mayland MN, LLC, Courchevel, LLC, Orbyx Electronics, LLC, and Circuit City Stores PR, LLC.

Procedural History

1. On November 10, 2008 (the “Petition Date”), Circuit City Stores, Inc. and its affiliated debtors (together, the “Debtors”) filed voluntary petitions in the Bankruptcy Court for relief under Chapter 11 of the bankruptcy court, thereby initiating the above-styled jointly-administered cases.

2. On November 12, 2008, the Bankruptcy Court entered its Order Establishing Bar Date For Filing Administrative Expense requests under Bankruptcy Code § 503(b)(9) – i.e., claims for goods delivered to the Debtors in the 20 days preceding the filing of the Debtors’ bankruptcy petitions.

3. On December 1, 2008, PNY timely filed a Section 503(b)(9) Claim Request Form seeking payment of a \$1,723,312.08 administrative claim (the “Claim”). PNY attached its invoices to the Claim.

4. On September 15, 2009, the Debtors filed an objection to the Claim of PNY (the “Thirty-Ninth Omnibus Objection”). See Document No. 4881. The Objection stated that PNY’s Claim was overstated, and sought to bifurcate the claim into an unsecured portion of \$875,313.70 and an administrative portion of \$847,998.38. From a review of its records, PNY determined that the entire claim was not an administrative claim pursuant to 11 U.S.C. § 503(b)(9). PNY did not object to this reclassification, and the Claim was bifurcated, with \$847,998.38 remaining as a 503(b)(9) claim (the “503(b)(9) Claim”).

5. On October 13, 2009, the Debtors filed an objection to the 503(b)(9) Claim (the “Fifty-First Omnibus Objection”). See Document Nos. 5214 and 5215. The Fifty-First Omnibus Objection sought to reduce the 503(b)(9) Claim to zero based on alleged preference payments to PNY. On the same date, the Debtors filed a separate objection (the “Fifty-Second Omnibus

Objection”), which sought the same relief, on the same grounds, with respect to many of the other 503(b)(9) claims that have been filed against the Debtor.

6. On November 3, 2009, PNY timely filed its *Response to Debtor's Fifty-First Omnibus Objection to Certain 503(B)(9) Claims* (“PNY’s Opposition”).

7. Many other parties also filed responses in opposition to the First-First Omnibus Objection and the Fifty-Second Omnibus Objection.

8. On November 12, 2009, the Court held an initial hearing on the Fifty-First Omnibus Objection and the Fifty-Second Omnibus Objection (the “Omnibus Objection Hearing”). At such hearing, numerous counsel appeared on behalf of the many parties who had filed responses in opposition to the Fifty-First Omnibus Objection or the Fifty-Second Omnibus Objection and presented legal argument to the Court.

9. On January 6, 2010, the Court entered an Order on Debtors’ Fifty-First and Fifty-Second Omnibus Objections (“Order”), accompanied by a Memorandum Opinion (“Memorandum Opinion” or “Opinion”). See Document No. 6228. The Order partially sustained the Fifty-First Omnibus Objection and Fifty-Second Omnibus Objection, ordering that “Debtors may apply 11 U.S.C. § 502(d) to temporarily disallow the claims filed by Respondents under 11 U.S.C. § 503(b)(9) ... up to the amount potentially recoverable on account of preferential transfers allegedly avoidable under 11 U.S.C. § 547” and “Respondents’ § 503(b)(9) claims identified in the Objections are temporarily disallowed.” Order 1-3.

10. PNY has timely filed a Notice of Appeal of the Order, a Motion for Leave to Appeal from the Order, and Notice of such motion.

Relief Requested and Basis Therefore

11. PNY requests leave of Court to include in the record on appeal all arguments of all counsel recorded in the transcript of Omnibus Objection Hearing. The transcript was originally filed on the docket on November 18, 2009, as Docket Number 5813, and a Corrected Transcript was filed on November 19, 2009, as Docket Number 5837.

12. This Court's Local Rule 8006-1(A) provides that "unless otherwise directed by the Court, the record on appeal in any matter shall not include counsel's opening statement or arguments of counsel, including arguments of counsel on motions."

13. The Omnibus Objection Hearing was comprised entirely of arguments on legal issues, and this Court rendered its opinion based solely on such issues. There was no evidence presented at the hearing, and the Court's opinion does not include any findings of fact. Therefore, the arguments presented at the Omnibus Objection Hearing are central to the Court's ruling and the appellate court's understanding and review thereof.

WHEREFORE, PNY Technologies, Inc. requests (a) that the Court enter an Order granting this Motion and providing leave to include the arguments of counsel presented at the Omnibus Objection Hearing in the record on appeal, and (b) such other and further relief as the Court deems appropriate.

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PNY TECHNOLOGIES, INC.

By: /s/ Neil E. McCullagh
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Certificate of Service

I hereby certify that on March 9, 2010, I caused a copy of the foregoing Motion for Leave to be served on those listed below, who together constitute all necessary parties, by first class mail, postage prepaid, and by email (where an email address is shown below):

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